REMARKS

Applicant has carefully reviewed the Office Action mailed May 7, 2008 and offers the following remarks.

Rejection Under 35 U.S.C. § 102(e) – Ravi

Claims 26 and 28 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,240,280 B1 to Ravi et al. (hereinafter "Ravi"). Applicant respectfully traverses. For the Patent Office to prove anticipation, the Patent Office must show where each and every element of the claim is taught in the reference. Further, the elements of the reference must be arranged as claimed. MPEP § 2131. Anticipation is a strict standard, and the Patent Office has not satisfied its burden in the present application.

Applicant's claim 26 claims an embodiment of the invention wherein a CD player can produce an audio signal, such as a song, and wherein a recognition processor coupled to the CD player can receive the audio signal, generate a template from the audio signal, and compare the template to other templates stored in a memory. In contrast, Ravi discloses a Radio Data System (RDS) radio that searches RDS subcarrier data for a station that is capable of broadcasting certain types of information, such as traffic information, and further attempts to find a station that is also of a program type that matches a program type in the radio's preset channel memory.

The Patent Office asserts that Ravi discloses the use of a CD player (disk player 18) at a broadcast station to transmit audio signals that presumably contain templates, and the use of a recognition processor (presumably antenna 12 and microcontroller 11) that can extract the templates from the audio signals and compare the templates to templates stored in memory (the type codes associated with radio programs stored in the users preset channel memory) (Office Action mailed May 7, 2008, pp. 2 and 3).

First, Applicant notes that the only discussion in Ravi regarding use of the CD player is that a CD player may be a type of media player 18 used by the listener while the recognition processor is analyzing RDS data received from a broadcast tower (Ravi, col. 2, ll. 35-40). Nowhere does Ravi disclose the use of a CD player in the context of a broadcast station, nor the use of a CD player to generate and send RDS data, as suggested by the Patent Office. Second, Applicant notes that Ravi's sole disclosure relating to audio information, such as program type codes and flags, which the Patent Office erroneously suggests are equivalent to Applicant's

claimed templates, relates to RDS data. RDS data is not part of the audio signal; rather, RDS data is carried on a separate subcarrier. Hence, a RDS capable radio must be used to interpret RDS data, because the radio must be designed and built to tune to a subcarrier and interpret the digital data, such as program information, encoded thereon. In direct contrast to the use of a separate digital subcarrier containing data, Applicant's claimed invention requires generating a template from the audio signal. Nowhere does Ravi teach or suggest the generation of a template from an audio signal. Rather, Ravi discloses extracting existing digital data having a predetermined meaning from a predetermined field in a subcarrier stream of digital data.

Accordingly, for at least these reasons, Applicant submits that Ravi does not anticipate Applicant's claim 26, and that claim 26 is therefore allowable. Claim 28, as a dependent claim depending indirectly from claim 26, is allowable for at least the same reasons set forth above with respect to claim 26. However, Applicant reserves the right to further address the rejection of claim 28 in the future, if necessary.

Rejection Under 35 U.S.C. § 103(a) – Van Ryzin, Ravi, and Scott

Claims 29-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 6,011,854 to Van Ryzin ("hereinafter "Van Ryzin") in view of Ravi and in further view of U.S. Patent No. 4,383,135 to Scott et al. (hereinafter "Scott"). Applicant respectfully traverses. To establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is taught or suggested in the combination of references. If the Patent Office cannot establish *prima facie* obviousness, the claims are allowable.

Regarding claim 29, Van Ryzin fails to expressly or inherently disclose at least: (1) a means for generating a template from the audio signal produced by the means for producing the audio signal and (2) an adding means for adding the template to at least one of two or more sets of templates. The Patent Office concedes that Van Ryzin fails to disclose generating a template from the audio signal, but asserts it would have been obvious to implement the technique of Ravi within the system of Van Ryzin (Office Action mailed May 7, 2008, p. 4). However, as discussed at length above, Ravi discloses extracting data from a separate data subcarrier channel, and not generating a template from an audio signal. Consequently, Applicant urges that Ravi fails to compensate for Van Ryzin's deficiencies in this regard. Moreover, since both Van Ryzin and Ravi fail to teach or suggest the generation of templates from the audio signal, Van Ryzin

and Ravi also fail to teach or suggest adding means for adding the template to at least one of two or more sets of templates.

Finally, neither Van Ryzin nor Ravi teach or suggest the use of two sets of templates. Van Ryzin discusses entering multiple keywords, but contains no teaching or suggestion relating to maintaining keywords (let alone templates) in two sets. Because Van Ryzin, alone or in combination with Ravi, fails to disclose each and every element of claim 29, Applicant submits that claim 29 is allowable. Claims 30 and 31, as dependent claims depending directly from claim 29, are allowable for at least the same reasons set forth above with respect to claim 29. However, Applicant reserves the right to further address the rejection of claims 30 and 31 in the future, if needed.

Regarding claim 32, among other things, Van Ryzin fails to expressly or inherently disclose at least: (1) generating the template from the audio signal, (2) determining whether a user has indicated a dislike of content associated with the audio signal, and (3) adding the template to at least one of two or more sets of templates if it is determined that the user has indicated a dislike of the content associated with the audio signal. The Patent Office concedes point 1, and suggests that Ravi discloses the generation of templates from audio signals (*Id.* at pp. 5 and 6). However, for the reasons discussed above, Ravi also fails to teach or suggest generating a template from an audio signal. Regarding point 2, the Patent Office appears to assert that the designation of certain keywords in Van Ryzin is analogous to indicating a dislike of content associated with the audio signal (*Id.* at p. 5). Applicant respectfully disagrees.

Van Ryzin teaches to search and find content that contains a keyword entered by the user. It is counterintuitive that the user would want to search and find content that the user does not want to hear. Consequently, Applicant urges that Van Ryzin fails to disclose determining that a user dislikes content associated with an audio signal. Regarding point 3, neither Van Ryzin nor Ravi teach or suggest the use of two sets of templates. Van Ryzin discusses entering multiple keywords, but contains no teaching or suggestion relating to maintaining keywords (let alone templates) in two sets. Moreover, Van Ryzin fails to disclose adding a template to a set of templates if a determination is made that the user has indicated a ***dislike*** of the content associated with the audio signal. For at least these reasons, Applicant submits that claim 32 is allowable. Claim 33, as a dependent claim depending directly from claim 32, is allowable for at least the

same reasons set forth above with respect to claim 32. However, Applicant reserves the right to further address the rejection of claim 33 in the future, if needed.

Regarding claim 34, Van Ryzin fails to disclose at least: (1) generating the template from the audio signal, (2) determining whether a user has indicated a listening preference for content associated with the audio signal, and (3) adding the template to at least one of two or more sets of templates if it is determined that the user has indicated a listening preference for the content associated with the audio signal. The Patent Office concedes point 1, and suggests that Ravi discloses the generation of templates from audio signals (*Id.* at pp. 5 and 6). However, for the reasons discussed above, Ravi also fails to teach or suggest generating a template from an audio signal. Regarding point 2, the Patent Office appears to assert that the designation of certain keywords in Van Ryzin is analogous to determining whether a user of the system has indicated a listening preference for content associated with said audio signal (*Id.* at p. 5). Applicant respectfully disagrees.

Van Ryzin teaches to search and find content that contains a keyword entered by the user. A user enters a keyword and the system tries to find content that contains the keyword (Van Ryzin, col. 2, ll. 30-45). In contrast, Applicant's claimed invention does not relate to searching and finding content based on a keyword. Rather, Applicant's invention requires determining whether a user of the system has indicated a listening preference for content associated with the audio signal. Applicant's invention relates to listening to content and then indicating a preference for the content. Nowhere does Van Ryzin disclose listening to content and then indicating a preference for the content.

Regarding point 3, neither Van Ryzin nor Ravi teach or suggest the use of two sets of templates. Van Ryzin discusses entering multiple keywords (*Ibid.*), but contains no teaching or suggestion relating to maintaining keywords (let alone templates) in two sets. Moreover, Van Ryzin fails to disclose adding a template to a set of templates if a determination is made that the user has indicated a preference of the content associated with the audio signal. For at least these reasons, Applicant submits that claim 34 is allowable. Claim 35, as a dependent claim depending directly from claim 34, is allowable for at least the same reasons set forth above with respect to claim 34. However, Applicant reserves the right to further address the rejection of claim 35 in the future, if needed.

Rejection Under 35 U.S.C. § 103(a) – Ravi and Mimick

Claim 27 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ravi in view of U.S. Patent No. 5,594,601 to Mimick et al. (hereinafter "Mimick"). Applicant respectfully traverses. The standards for obviousness are set forth above.

Claim 27 is a dependent claim depending directly from claim 26. As such, claim 27 is allowable for at least the same reasons set forth above with respect to claim 26. However, Applicant reserves the right to further address the rejection of claim 27 in the future, if needed.

Rejection for Double Patenting

Claims 26-35 were rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,704,553 B1 to Eubanks (hereinafter "Eubanks"). Applicant will submit a terminal disclaimer upon the indication by the Patent Office that claims 26-35 are otherwise allowable.

Conclusion

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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